

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

**NOTICE OF MOTION NO. 1175 OF 2000
IN
SUIT NO. 1423 OF 2000**

International Association of
Lions Club ...plaintiff
VS.
National Association of Indian
Lions and Ors. ...Defendants.

Mr. T.N. Daruwalla with Ms. Sushma Singh and
Ms. Blossom Noronha i/b. Jehangir Gulabbhai abd
Bilimoria and Daruwala for the plaintiffs.

Rajesh Shah a/w. Harakchand Gada i/by.
Harakchand and Co. for the defendants.

CORAM: S.U.KAMDAR, J.

DATED: 25TH JANUARY, 2006.

JUDGMENT :

1. By an order dated 16.10.2002 this court has formulated a preliminary issue of jurisdiction under section 9A of the CPC as amended for the State of Maharashtra. The issue framed is as under :

Does the plaintiff prove that
this court has jurisdiction to
try the present suit ?

2. After framing the issue of jurisdiction by an order dated 23.6.2005 this court directed that the evidence be recorded on the issue of jurisdiction and a Commissioner was appointed to record the oral evidence of both sides. Accordingly, Mr. Vatsal Shah advocate was appointed as Commissioner. The Commissioner has concluded the evidence and has filed his report. The same is taken on record in accordance with the order passed by this court on 23.6.2005. Before dealing with the motion on merits I shall deal with the issue of jurisdiction and accordingly I have heard the parties on the issue of jurisdiction. Some of the material facts of the present case are as under :

3. The present suit is filed by a club known as 'Lions Club International' against the defendant who are claiming themselves to be a National Association of Indian Lions'. By the present suit the plaintiffs are seeking that the

defendant should be restrained by an order and perpetual injunction from in any manner using the word 'LION' or 'LEOS' or any other registered trade mark or service mark or any other word or mark identical with or deceptively similar thereto with that of the name of the plaintiff. In prayer (b) of the plaint an injunction is sought from restraining the defendant from carrying out their activities as a LIONS Club or any other associated club. In prayer (c) an injunction is sought on the basis of registered trade mark. In prayer (d) injunction is sought against using any domain name with the use of the words 'LIONS' therein. By prayer (e) copy right infringement is also sought in respect original artistic work of the word 'LION' with the emblem as set out in Exhibit-M to the plaint. Thus the suit is filed both for an infringement of trade mark as well as for passing off as well as for the purpose of passing off a copy right and infringing the rights of the plaintiff in the said art work associated with the words 'LIONS' and 'LEOS'

4. An application is also filed under clause 14 of the Letters Patent of this court for joinder of two distinct cause of action of passing off as well as of breach of copy rights. Leave under Clause 14 has not been yet granted by this court because of raising of issue of jurisdiction by the defendant and framing of the same as a preliminary issue under section 9A of the CPC as amended for the State of Maharashtra.

5. Learned counsel for the defendant who has raised the issue of jurisdiction has inter-alia contended that this court has no jurisdiction firstly because the defendants are neither residents nor carrying on any business within the territorial jurisdiction of this court and that the association of the defendants i.e. National Society of Indian Lions is registered under the Rajasthan Societies Act, 1958 and its registered office at 1,502, Ramble Road, Ajmer 305 001, Rajasthan, India. It has been contended that the area of operation of the defendant no.5 is

restricted only in the city of Rajasthan and not outside the said state. It has been further contended that the Memorandum of Association and Articles of Association of the defendant no.5 inter-alia stipulates that the area of operation of the defendant no.5 is only in the state of Rajasthan and not outside thereto. It has also been contended that the other defendants to the suit some of whom are the members of the defendant no.5 association also have their residence in Ajmer i.e. within the State of Rajasthan and they are neither residing nor carrying on any business within the territorial jurisdiction of this court. It has been thus contended that this court has no jurisdiction to entertain and try the present suit. It has been further contended that in the light of the fact that the entire activity of the defendant no.5 is restricted in the state of Rajasthan and that the Articles of Association and Memorandum of Association or constitution of the 5th defendant Association being providing for activities only within the state of Rajasthan no part of cause of

action has arisen in Mumbai and therefore this court has no jurisdiction to entertain and try the present suit. It has been further contended that none of the goods of the defendant no.5 which are having Lion as the name or emblem thereof on T-Shirts or other articles is either sold or distributed or made available in the city of Mumbai and therefore also there is no question of any passing off of any goods within the territorial jurisdiction of this court and therefore this court has no jurisdiction to entertain and try the present suit. In support of the aforesaid contention the learned counsel appearing for the defendants has also drawn my attention to the various part of evidence of the parties before me. He has contended that the only evidence which has been produced by the plaintiff to show that this court has jurisdiction in the course of examination in chief of P.W.No.1 is found in para 31, 32 and 35 thereof. He has contended that this evidence of P.W. no.1 itself indicates that this court has no jurisdiction to entertain and try the suit.

He contended that from deposition of P.W.no.1 itself it is established that the alleged infringement or passing off or breach of copy rights has taken place only in Ajmer and not within the territorial jurisdiction of this court in Mumbai. He contends that in para 31 of the evidence it has been stated that the plaintiff has obtained a pamphlet in Hindi from Ajmer office of the defendant. In para=32 he has stated that the defendants address given is also of Ajmer. In para-35 he has pointed out that the defendant no.1 is a joint chairman of the District Club at Ajmer and in para-36 once again it has been deposed that originally the said club has started only in Ajmer and not outside. He has further pointed out that even in para-35 of the cross examination he has deposed that the plaintiffs have a club affiliated to them in Rajasthan but he does not know whether the defendant have any branch in Mumbai. He has further deposed that he does not known whether the defendants have any activity in Mumbai. In para-16 of the cross-examination he has positively deposed

saying that the defendant no.5 is a registered society and it is registered in Ajmer and Rajasthan under the Rajasthan Societies Act, 1958. Further he has deposed that he is not aware of the bye-laws of the defendant no.5 or the constitution of the defendant no.5. Similarly he has relied upon the evidence of the witness of the defendant being D.W. no.1 particularly para-4 to 8 of his examination-in-chief. In para-4 to 8 of his examination-in-chief he has given details that the defendant no.5 is a society registered under the Rajasthan Registration Society Act, 1999. The said society is registered on 18.2.2000 and he has produced the certificate of registration. D.W.No.1 has also produced the constitution of defendant no.5 and english translation thereof. He has also produced the bye-laws. In para-8 of his cross-examination he has deposed that the defendant no.5 and its members are providing only social service to the people residing in the State of Rajasthan and are not carrying any manufacturing and or any business or distribution

activities at all. He has further deposed that he has neither carried out any trade or sold either in Ajmer or in Rajasthan or in Mumbai any of the articles or things with the aforesaid name of Lion or Leos or any emblem thereof. In so far as the web-site is concerned, D.W. no.1 has deposed that the defendant no.5 society never had its own website or never published its pamphlet showing the emblem. Relying upon the aforesaid evidence the learned counsel for the defendant has vehemently contended that the suit is not maintainable in this court as this court has no territorial jurisdiction to entertain and try the present suit. He has further contended that no leave under clause-14 can be granted to the plaintiffs for entertaining the present suit. He thus invited me to dismiss the suit for want of jurisdiction.

6. Learned counsel for the defendant thereafter contended that admittedly this court has no jurisdiction for passing off action because none of the goods belonging to the

defendant with the emblem mark or with the picture of Lion is sold or distributed within the territorial jurisdiction of this court and therefore the passing off of copy rights filed by the plaintiff by way of the present suit is not maintainable. He has further contended that even a suit for breach of copy rights is not maintainable because according to him in deposition of cross-examination of P.W.No.1, P.W. No.1 has deposed as under :

. "It is true that the Emblem on page 10 of the plaint is used by the plaintiffs since 1921. To the best of my knowledge the plaintiffs are claiming copyright of the said emblem. The plaintiffs do not claim copyright in respect of any other emblem other than the emblem shown on page 10 of the plaint. "

7. He has contended that thus by virtue of the said deposition it has been established that the plaintiff had registered their mark for copy right in 1921. He has contended that under section 29 of the Copy Right Act, 1957 registration in cases of an international

organisation to which the provisions of Section 41 apply can subsist only for a period of 60 years from the beginning of the calendar year next following the year in which the work is first published. It is contended by the learned counsel for the defendant that in view of the deposition in para 19 of the P.W. no.1 it is clear that the copy right was registered in 1921. The next calendar year is 1922 and therefore according to him in 1982 the said copy right registration has lapsed and thus the suit on the basis of infringement or breach of copy rights or a passing off a design of the plaintiff in respect of copy right cannot at all subsist and thus for the purpose of clause 14 of the Letters Patent according to the learned counsel for defendant no.5 a suit in respect of passing off of the copy right design must be dismissed.

8. Learned counsel for the plaintiff has on the other hand contended that this court must grant leave under Clause 14 of the Letters Patent. He has contended that in Clause 14 a

joinder of cause of action for passing off trade mark or copy right is permissible. He has further contended that even in respect of any one of the causes of action if that cause of action has arisen within the territorial jurisdiction of this court then by virtue of grant of leave under Clause 14 this court can entertain the whole suit even in respect of that part of cause of action which did not arise within the territorial jurisdiction of this court. It has been contended that in the present case on admitted facts a cause of action or passing off copy rights does arise within the territorial jurisdiction of this court. In respect of the aforesaid contention the learned counsel has relied upon the deposition of P.W.No.2. P.W.No.2 has deposed that he sought to access the website from Bombay and in fact he sent an e-mail requesting that he be enrolled as a member of the defendant no.5 club. He has further pointed out in his deposition that in reply to his email message he received a message and was asked to access the website from where he could get the

admission form for the purpose of enrollment. This evidence of P.W.no.2 on behalf of the plaintiff itself in para 2 to 5 of his evidence has almost gone unchallenged. Though he is cross examined by the defendant nothing much has been achieved except the question no.18 in which he was asked how does he say that the people from Bombay can apply for membership to which he has replied that people from Bombay can apply by accessing the website www.indianlions.org.bizli.com. Apart from that one question no cross examination has been conducted. Not only that in his evidence the P.W.NO. 2 specifically mentioned that he had sent an email to defendant no.3. There is no dispute that defendant no.3 is a member of the defendant no.5 association. He has also deposed that defendant no.3 asked him to access the said website and become a member. In respect of the aforesaid the defendants have not led the evidence of the defendant no.3 because he did not step in the witness box. It was necessary to examine him in the light of the evidence of P.W. no.2. Thus

according to the plaintiff it has been established that by and through the website www.indianlions.org the defendants are committing breach of the design and logo of the plaintiff as this design and logo can be accessed even in Mumbai. Further more it has been contended that through website the defendant no.5 is carrying on its activities in Mumbai by enrolling the members within the city of Mumbai. He has further produced in the course of the evidence the visiting card of one of the persons namely Mr. T.G. Gala who is using the LION emblem with the word 'Indian Lions' and is residing in Bombay. It is his case that thus the defendants are in fact carrying on activities in city of Mumbai. In so far as the said visiting card is concerned the objection has been raised that the visiting card is not proved in the course of his evidence because it was not relied upon in affidavit of documents. Apart therefrom there is no other challenge to the said visiting card. Learned counsel for the plaintiffs thus states that he is able to establish that this court has

jurisdiction in respect of the cause of action for passing off of copy right and once it is so then the plaintiff is entitled to maintain the present suit. Learned counsel for the plaintiff has thereafter relied upon the provisions of section 62 of the Copy Right Act in which it is inter-alia mentioned that any proceedings can be instituted under the Act in respect of the infringement of copy right in the district court having jurisdiction. Under sub-section 2 of section 62 it has been explained that the word 'district court' means within the local limits of whose jurisdiction at the time of institution of suit or other proceedings the person instituting the suit or other proceedings or where there are more than one persons and any one of them actually or voluntarily resides or carries on business or personally works for gain. It has been contended by the learned counsel for the plaintiff that in the present case under sub-section 2 the plaintiffs are having their office in Bombay and that their activities are carried out in Mumbai and therefore under section

62(2) they are entitled to maintain the suit in this court because it is the plaintiffs who have instituted the suit and that they carried out the business for gain in Mumbai. It is therefore contended that the plaintiffs are carrying out business in Bombay and therefore they can maintain the suit on infringement and or passing off of copy right in Bombay. It has been contended that once the case of the plaintiffs for infringement and passing off of copy rights of the design falls within the city of Bombay then this court has jurisdiction to entertain and try the present suit and by virtue of clause 14 of the Letters Patent they are entitled to join the cause of action even in respect of passing off of the trade mark and or infringement thereof in this court. Learned counsel for the plaintiff has relied upon the decision of the single judge of this court in the case of **Burroughs Wellcome (India) Ltd vs. G.K. Sharma and King Scientific Research Centre** reported in 1990(1) PLR 60 particularly para-3 and 5 thereof which reads as under :

3. The motion was called out for hearing before me on March 9, 1989 and Shri Desai, learned counsel appearing on behalf of the defendants, raised a preliminary objection to the maintainability of the suit in this court on the ground that this court has no jurisdiction to entertain and grant the relief. Shri Desai contended that the defendants, on the date of the filing of the suit, did not carry on any business within the jurisdiction of this court. Shri Desai claimed that though initially the defendants had maintained an office at Kandivali in Bombay for the purpose of facilitating purchase of raw materials, the same was closed down in March or April 1988 and thereafter the defendants are carrying on business only at Kota in Rajasthan, Shri Mehta, learned counsel appearing on behalf of the plaintiffs, on the other hand, urged that the cartons used by the defendants even now show that the business was carried out at Kandivali, Bombay. The hearing of the motion was postponed to ascertain whether in fact the defendants are even now having office at Kandivali. There is no dispute that in respect of cause of action arising out of the infringement of copy right, this court has jurisdiction under Section 62 of the Copy Right Act. The plaintiffs complaining of violation of copyright can institute suit at the place where the plaintiffs are residing or carrying on business. The jurisdiction of this court was challenged only in respect of cause of action arising out of infringement of trade mark and grievance about passing off.

On the same day i.e. March 9, 1989 Misc. Petition no. 13 of 1989 filed by the plaintiffs seeking leave under Clause XIV

of the Letters Patent, permitting the plaintiffs to combine the causes of action pertaining to the infringement of the trade mark and passing off with the cause of action pertaining to the infringement of Copy Right. The petition was accepted on the same day and notice was issued to the defendants and direction was given that this petition should be heard along with the Notice of Motion. Accordingly, both the proceedings are now posted before me for hearing and final disposal.

5. The defendants had commenced sale in the year 1985 and the sales are restricted to State of Rajasthan and the annuals sale figure does not exceed Rs.22,262/- from the year 1986 onwards. The submission of Shri Desai that as the drug is sold only in Rajasthan and, therefore, there is no chance of deception cannot be accepted because the preparation of the plaintiff is sold all over India and there is no prohibition for the defendants to do the same.

9. He has thereafter relied upon the judgment of the division bench in the case of **M/s. Arte Indiana, Mumbai vs. M/s. P. Mittulaul Shah and Sons, Madras** reported in AIR 1999 Bom. 369 para-3 and 12 thereof which reads as under.

3. In view of claims in the plaint about the infringement of trademark and passing off, the appellant filed an application under Clause (14) of the

Letters Patent seeking leave of the court to combine the cause of action relating to copyright and the cause of action relating to infringement and passing off. The leave has been declined by learned single judge. In terms of the impugned order, learned single judge has held that no part of the cause of action has arisen within the territorial jurisdiction of this court. The learned single judge has opined that Clause (14) provides that leave can be granted by this court for joinder of causes of action provided one of such causes of action has arisen within the jurisdiction of this court. Clause 14 reads as under :

"14. And we do further ordain that where plaintiff had several causes of action against a defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit."

. A bare reading of the aforesaid clause shows that the accrual of the cause of action within the territorial jurisdiction of this court is not contemplated to permit joinder of causes of action. Clause (14) contemplate that this court shall have original jurisdiction in respect of one of such causes of action to permit two separate causes of action being combined together in one suit. The learned single judge has, however, come to the conclusion that if right to sue has been conferred by an

act of Parliament and it is because of conferring of such right that a suit can be maintained, then it cannot be said that the right to sue is pursuant to ordinary original jurisdiction of this court as conferred by the Letters Patent. It has been also observed that the expression 'original jurisdiction' has been used to distinguish it from the extraordinary jurisdiction conferred by Clause (13) of the Letters Patent.

. The aforesaid are the brief facts under which the present Appeal has been preferred by the appellant. We may now notice some judgments relevant for decision of the point in issue. A Division Bench OF this court in Tukoji Rao Holder v. Sowkabei [reported in AIR 1929 Bom.100] while considering Clauses(12) and (14) of the Letters Patent and the provision of Order 2, Rules 3 and 34, Civil Procedure Code, has held that what is relevant is that once cause of action is within the jurisdiction of this court. In the present case the cause of action in relation to infringement of copyright is admittedly within the jurisdiction of this court.

12. Next, the question is whether on facts, the appellant is entitled to grant of leave as sought for or not. Learned counsel for the parties rightly adopted a just and reasonable approach and submitted that to avoid unnecessary delay and multiplicity of proceedings, this court may examine the facts and decide whether case for grant of leave has been made out or not. Learned counsel for the respondent, relying upon a single bench decision of the Madras High Court in the case of Brooke Bond India Ltd vs. Balaji Tea (India) P.Ltd (1990 IPLR 266) contended that considering the facts and circumstances of the case, the leave

deserved to be declined. It was pointed out by the learned counsel that the appellant had given legal notice to the respondent as far back as on 10th January, 1997 which was replied on 1st March, 1997 and also that a complaint was lodged by the appellant for the alleged violation of its right with the Spice Board and the Spice Board had asked the respondent by its letters dated 28th January, 1997 requiring the respondent to furnish facts say on the allegations made by the appellant and on the same being done, the matter was closed by the Spice Board. That is also said to have happened at Chennai. It is also pointed out that recently in the first week of January 1999, the appellant had filed against the respondent, a complaint under Section 483 read with Section 34, Indian Penal Code and Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 and Section 63 and 64 of the Copyright Act, 1957 with the Police Department at Chennai and as such too, the appellant was not entitled to grant of leave.

10. He has thereafter relied upon the judgment of the apex court in the case of **Exphar SA and anr. vs. Eupharma Laboratories Ltd and anr.** reported in **AIR 2004 S.C. 1682** particularly para-12 which reads as under :

12. We would like to emphasise the

word "include". This shows that the jurisdiction for the purposes of Section 62 is wider than that of the court as prescribed under the Code of civil Procedure, 1908. The relevant extract of the report of the Joint Committee published in the Gazette of India dated 23.11.1956 which preceded and laid the foundation for section 62(2) said :

"In the opinion of the Committee many authors are deterred from instituting infringement proceedings because the court in which suit proceedings are to be instituted is situated at a considerable distance from the place of their ordinary residence. The Committee feels that this impediment should be removed and the new sub-clause (2) accordingly provides that infringement proceedings may be instituted in the district court within the local limits of whose jurisdiction the person instituting the proceedings ordinarily resides, carries on business etc."

11. Similarly he has relied upon the judgment of the single judge of this court in the case of **John George Dobson vs. The Krishna Mills** reported in **ILR 1910 (34) Bom. 564.** and the judgment of the Division Bench in the case of **Tukojirao Holkar vs. Sowkabei Pandharinath**

Rajapurkar reported in AIR 1929 Bom.100. He has alternatively contended that even on evidence which has been laid on the issue of jurisdiction it is established that there is a breach of the copy right of the plaintiff within the city of Bombay by virtue of accessing the website and by soliciting the members within the city of Bombay. Apart therefrom he contends that under section 62(2) the fact that plaintiffs are situated in Mumbai is sufficient to confer a jurisdiction of this court and institute a suit in this court under section 62(2) of the Copy Right Act. He has contended that once for the purpose of cause of action of infringement of copy right this court has jurisdiction then in that event he is also entitled to maintain the suit for passing off and infringement of trade mark by joining the cause of action under Clause 14 of Letters Patent.

12. I have heard both the parties at length. Before I deal with the rival submissions in my opinion it is necessary to reproduce clause 14 of

the Letters Patent and the provisions of Clause 62 of the Copy Right Act on the interpretation therein where the answer to the jurisdiction issue essentially lies. Though the oral evidence is led by the parties on the issue of jurisdiction I am of the opinion that essentially it is a question of law which is required to be determined for the purpose of ascertainment whether this court has jurisdiction or not to entertain and try the suit. In so far as Clause 14 is concerned it is clear from plain reading thereof that a plaintiff can have joinder of cause of action even if one of the causes of action is not arising within the territorial limit of this court, if another cause of action which is sought to be joined has arisen within the territorial limit of this court. In the present case the cause of action for infringement and/or passing off of copy rights does arise within the territorial jurisdiction of this court. Firstly because under the provisions of section 62(2) it is this court who has jurisdiction where the office of the plaintiff

who has instituted the suit is situated. In the present case the plaintiff has office at 144, Free Press House, Nariman Point, Bombay and this aspect is not seriously disputed. In para-3 of the affidavit of P.W.no.1 he has deposed that the plaintiff has area office at 144, Free Press House, Nariman Point, Bombay-21 and their area provides for administrative support to the Lions Club situated in the countries in India, Sri Lanka, Nepal, Bangladesh, Thailand, Malaysia, Brunie, Singapore, HongKong and Macau. He has also deposed in his evidence that large amount of material is distributed and various activities of lions club both social as well as charitable services are rendered and conducted by the plaintiff in Mumbai. Thus the plaintiff has their office in Mumbai and therefore they are entitled to institute the suit under section 62(2) of the Copy Right Act within the territorial jurisdiction of this court. The provisions of Section 62(2) in contradistinction to section 20 of C.P. Code provides for jurisdiction of court where plaintiffs are

carrying on business and resides and not the defendants. Apart from the aforesaid in the present case by virtue of the evidence of P.W. no.2 it has been established that defendant no.5 is carrying out their activities also within the city of this court. The defendant no.5 is soliciting the members for its organisation in Mumbai. The evidence of P.W.no.2 to that effect has gone unchallenged. The website of the defendant no. 5 can be accessed from Mumbai to which also there is no challenge. In my opinion by virtue of the soliciting of the membership and having access of the website activities of the defendant no.5 are extended within the local jurisdiction of this court and thus also this court shall have jurisdiction to entertain and try the present suit. IN the case of Burroughs Wellcome (India) Ltd (supra) the learned single judge has held that the plaintiff can institute the suit at the place where they are residing or carrying out business and the said court will have jurisdiction to entertain and try the present suit. Furthermore in the said judgment

it has also been held that if the goods are not sold and distributed within the territorial jurisdiction of this court still since there is no prohibition for the defendant to do the same this court will have jurisdiction. The relevant portion of the said judgment reads as under :

5. The defendants had commenced sale in the year 1985 and the sales are restricted to State of Rajasthan and the annuals sale figure does not exceed Rs.22,262/- from the year 1986 onwards. The submission of Shri Desai that as the drug is sold only in Rajasthan and, therefore, there is no chance of deception cannot be accepted because the preparation of the plaintiff is sold all over India and there is no prohibition for the defendants to do the same.

13. The division Bench of this court has also once again held that in the light of Clause 14 the plaintiffs are entitled to maintain the suit where they are situated even if no cause of action has arisen within the territorial limit of that jurisdiction. It has been thus held that

under Clause 14 even if one cause of action has arisen within the original jurisdiction of this court then the suit for a second cause of action which is sought to be joined under Clause 14 can be maintained in this court.

14. The next contention which has been advanced by the learned counsel for the defendant is based on section 29 of the Copy Right Act which inter-alia prescribes that the registration is valid only for a period of 60 years from the date of the next calender year after the date of registration in case of international trade marks or brand names and in the present case the copy right registration having expired a suit on infringement and/or passing thereof is not maintainable. I am of the opinion that the said contention is without any substance. Firstly there is no foundation in support of the factual data that infact registration has expired in 1982 i.e. 60 years from 1922. The only reliance placed is inrespect

of one question which was asked to P.W.no.1 during his cross examination in which he has deposed that their copy right registration is of the year 1922. There is no foundation or further cross examination inter-alia in respect of expiry of registration of the said copy right or non renewal thereto so as to non-suit the plaintiff. Mere oblique question raised in an examination in chief without any foundation being laid in support of the arguments to be advanced before the court cannot be treated as an evidence to hold that in fact the registration has expired in 1982. Mr. Shah learned counsel for the defendant has contended that the witness has not deposed further that the said registration is subsisting and valid and the same is renewed and therefore this court must infer that the registration has expired in 1982 and thus the suit for passing off of copy right is not maintainable. The submission in my opinion is without any merits. Once the question is asked about the year of registration of the copy right mark by the defendant to the P.W. no.1 then it was the duty

of the defendant no.1 to proceed further and cross examine the witness and ought to have quetioned whether the said copy right registsration is subsisting or expired. Apart therefrom I am of the opinion that registration of a design for copy right is not a sine-qua-non. In so far as the suit for passing off for the copy right design is concerned. The proprietor or owner of the copy right is entitled to maintain the suit without its design is registered for copy rights under the said Act. The registration thereof is only a prima-facie evidence of a ownership of such a copy right design. In a Book 'Law of Copyright and Industrial Designs', Third Edition, P. Narayanan on the Copy Right Act the learned author has opined as under :

24.25 Registration not compulsory :
Although the Copyright Act under s.44 provides for registsration of a work in which copyright subsists, registration is not necessary to claim copyright. Copyright susbsists as soon as the work is created and given a material form.

15. Under section 54 an 'owner' is is defined

by an inclusive definition and includes an exclusive licensee or in the case of anonymous or pseudonymous literary, dramatic, musical or artistic work an author, publisher and/or author's legal representatives. Thus an owner can always maintain a suit for infringement or passing off his copy right irrespective of the fact whether he has registered his design under the Copy Right Act or not. Thus in my view the contention of the learned counsel for the defendant that the suit as far as copy right is concerned is not maintainable because of expiry of registration in 1982 has no merits and thus the same is required to be rejected.

16. In the light of the aforesaid I am of the opinion that this court has jurisdiction to entertain and try the present suit for breach and infringement of copy rights and by virtue of clause 14 the plaintiffs are entitled to join the cause of action pertaining to the infringement and/or passing off of various articles of Lions

Club with the word mark 'LIONS' and/or 'LEOS'.
In that light of the matter I hold that this
court has jurisdiction to entertain and try the
suit. Accordingly I grant leave to the plaintiff
for joinder of cause of action. The leave
petition under clause 14 is accordingly made
absolute. No order as to costs.
